

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES DEVON LACKEY,

Defendant-Appellant.

UNPUBLISHED

September 28, 2010

No. 290412

Ingham Circuit Court

LC No. 08-000514-FH

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of breaking and entering a building with intent to commit a larceny, MCL 750.110. He was sentenced, as a fourth habitual offender, MCL 769.12, to three to twenty years' imprisonment. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant claims the evidence was insufficient to establish the "breaking" element of the conviction offense beyond a reasonable doubt because the incident occurred in a building on the campus of Michigan State University that was open to the public.

This Court reviews a claim of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748, amended 441 Mich 1201 (1992).

"The elements of the offense of breaking and entering with intent to commit larceny are: (1) the defendant broke into a building, (2) the defendant entered the building, and (3) at the time of the breaking and entering, the defendant intended to commit a larceny therein." *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998).

The parties stipulated at trial that, prior to the date of the incident, defendant had been "served notice and acknowledged that he was prohibited from entering upon the premises of MSU campus. . . ." Thus, even though defendant argues the building was "open to the public," he was legally prohibited from entering it. Defendant does not challenge the validity or enforceability of MSU's notice of trespass that prohibited him from entering any buildings. In light of that notice, defendant cannot be considered a member of the general public who had the

right to enter a building on the campus of a public university. Cf., *People v Brownfield (After Remand)*, 216 Mich App 429, 432; 548 NW2d 248 (1996). Here, defendant was seen entering the Natural Resources Building on the MSU campus. While inside, a student studying in a cubicle heard the sound of a backpack slowly being opened. He stood and observed defendant standing near his friend's backpack. He confronted defendant and defendant fled the building. Defendant admitted to police in an interview that he had intended to steal a computer and that he unzipped the backpack. By opening the outer door of a building that he was proscribed from entering, defendant satisfied the "breaking" element of the conviction offense. See *Toole*, 227 Mich App at 658-659. The prosecution established defendant's intent to commit a larceny through evidence that he had unzipped a backpack and by his admissions to police.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly